

In view of the above, and in specific answer to your first question, it is my opinion that a village is unauthorized to enter into an agreement to render fire protection to private individuals residing outside such village.

In view of my answer to your first question, it is unnecessary to answer your second question.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3278.

DITCH SUPERVISOR—MAY ORDER REMOVAL OF UNDERBRUSH AND WEEDS IN DITCH UNDER HIS SUPERVISION.

*SYLLABUS:*

*A ditch supervisor may order the removal of underbrush and weeds which prevent the free flow of water in a ditch under his supervision, in accordance with the provisions of Section 6691, Et. seq., General Code.*

COLUMBUS, OHIO, October 4, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A duly authorized and appointed Ditch Supervisor in Jackson Township, Putnam County, Ohio, desires to know whether or not he is authorized by law to clean out a certain ditch which is under his supervision by ordering the cutting of brush and the mowing of weeds in said ditch. The ditches under the supervision of this man have a great amount of underbrush and small growth timber growing in them and they are also filled with weeds, which prevent the free flow of water.

Section 6693 of the General Code provides that the ditch supervisor has authority to clean out and keep ditches, drains and water courses in repair as provided by law. The question is, does this language include the right of the ditch supervisor to cause the cutting of the brush and undergrowth and the mowing of weeds? I find no previous Attorney General's opinion or any case on this point and rather than have this matter come to court after the work has been done, I will be pleased for your opinion therein.”

Sections 6691, General Code, et seq., provide the procedure for repairing and cleaning ditches and drains which have been constructed in a township. These sections provide that the repair work is to be supervised by the county surveyor or the ditch supervisor, if one has been appointed, and provide for the apportionment of the work according to the benefits among the various land owners; and if the land owners fail to perform the work, the method is provided whereby the county surveyor or ditch supervisor may perform the work. The cost of the work is paid from the general ditch improvement fund of the county, and the county commissioners certify the cost to the county auditor, who is required to collect

the same as taxes from the property owners benefited, and when collected, to credit such payments to the general ditch improvement fund.

Section 6691, General Code, reads in part as follows:

"In any township or townships in which a ditch, drain or watercourse or part thereof has been or may hereafter be located and constructed, the county commissioners for the purpose of keeping such ditches, drains or watercourses clean and in repair, may delegate such duty to the county surveyor who shall execute the necessary work and assess the cost thereof in accordance with the provisions of this chapter as they relate to the duties of a ditch supervisor, or employ a ditch supervisor for such township; the same person may be employed as a ditch supervisor for one or more townships in the county; \* \* \* ."

Section 6693, General Code, reads in part as follows:

"The ditch supervisor shall have supervision of the cleaning out or repair of all ditches, drains or watercourses located and constructed in his township or townships, which have theretofore been located and constructed by township trustees, or by county commissioners as joint county ditches, and shall at all times be under the direction and control of the commissioners. The ditch supervisor is authorized to repair tile that are broken, uncovered, or stopped up; to open the outlet of tile; to repair any abutment, catch basin, or retaining wall that has been constructed on any ditch, drain or watercourse; and to clean out and keep ditches, drains or watercourses in repair as provided by law; \* \* \* ."

It is to be noticed that section 6693, *supra*, gives the ditch supervisor broad powers in the supervision of ditches and drains.

Your question refers to the power of the ditch supervisor to remove underbrush and weeds which prevent the free flow of water. Section 6691, *supra*, provides that it is the duty of the county commissioners to keep the ditches, drains and watercourses clean and in repair. While section 6693 does not attempt to state the particular repairs that the ditch supervisor may make, it is obvious that the legislature intended he should be able to make such repairs as are necessary to keep the ditches and drains clean and in repair. If the present underbrush and weeds are preventing the free flow of water, it follows that the ditch will become clogged up and the water will back up on the premises of the adjacent land owners. It is significant that under the provisions of section 6695, General Code, it is the duty of the ditch supervisor to clean or repair a ditch at the request of an interested land owner. It would follow that the repairs in question are such as are contemplated by section 6693, *supra*.

It is therefore my opinion, in specific answer to your question, that a ditch supervisor may order the removal of underbrush and weeds which prevent the free flow of water in a ditch under his supervision, in accordance with the provisions of Section 6691, *et seq.*, General Code.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*